



July 12, 2019

Dan Rubins
MuckRock News
Via email: 76635-16430093@requests.muckrock.com

RE: Your CPRA request dated July 4, 2019

Dear Dan Rubins:

We are responding to your California Public Records Act (CPRA) request received in an email on July 4, 2019. You are seeking all "Brady lists," "Giglio lists," "potential impeachment disclosure lists," or any similar compiled records or lists of records of the type set forth in California Penal Code section 837.7(b)(1)(C).

The names of police officers listed in the Brady Bank are exempt from disclosure pursuant to Government Code sections 6254(f) and 6255 and Evidence Code section 1040. While recent changes to California Law make many records public which were previously deemed exempt from disclosure, the names of officers on our Brady List remain exempt.

This Office uses the Brady list to balance a defendant's right to a fair trial against a peace officer's statutory right of confidentiality in personnel files. Under Penal Code section 832.7, peace officers personnel records are confidential and cannot be disclosed without a special hearing in court. On the other hand, if there is something in a police officer's background that might bear on the reliability of his or her testimony, and if that information about the officer is "material" the District Attorney is obligated to disclose that information to the defense. The problem arises because in most cases, the information in question is contained in the officer's personnel file, and the District Attorney does not have access to that information.

To solve that problem, the District Attorney worked in cooperation with local police agencies to develop a "Brady List." On a periodic basis, police agencies supply the name, but usually only the name, of an officer when the agency has information that might materially impact the officer's testimony. When one of the listed officers is identified as a witness in a criminal case, the District Attorney informs the defense and a motion is filed to obtain the records. The court reviews the motion and the information in camera and decides whether the information is material and should be disclosed. When such material is disclosed, the court also issues a protective order prohibiting the defendant and the District Attorney from disclosing that information further. The actual information is at all times in the possession of the police agency, not the District

Attorney, and reviewed by the court, not by the defense or the District Attorney. If the evidence is disclosed to us by court order, it is subject to a protective order that prevents further disclosure. As a result, we either do not know the reasons for which an officer has been placed on the Brady list or we are precluded by court order from disclosing those reasons. A new motion would be required in any subsequent case involving the same officer. This system allows us to make sure that the defense gets the information they are entitled to, but also protects the officers' right of confidentiality.

However, we will produce disclosable materials that we have in our possession that come within the parameters of Penal Code section 832.7. These records will be redacted pursuant to that section. Due to the volume of records, we will transfer these records to a CD-ROM and mail it to MuckRock News, DEPT MR 76635, 411A Highland Ave, Somerville, MA 02144-2516 on or before July 31, 2019.

Please keep in mind you are free to request materials from the law enforcement agencies that employ peace officers.

Very truly yours,

NANCY E. O'MALLEY
District Attorney

By: 

Micheal O'Connor, Assistant District Attorney
Custodian of the Record